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OFFICE OF PETITIONS

In re Application of
Eschermann, et al.
Application No. 10/073,954
Filed: February 14, 2002
Attorney Docket No. 004501-637
For: PREPROCESSOR FOR A
PREDETERMINED DOCUMENT TYPE
DEFINITION, SYSTEM FOR
PROCESSING MARKUP LANGUAGE
DOCUMENTS, AND METHOD AND
COMPUTER PROGRAM PRODUCT FOR
THIS PURPOSE

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This is a decision on the petition entitled, "PETITION UNDER 37 CFR 1.182 FOR ESTABLISHMENT OF APPLICATION FILING DATE IN RESPONSE TO NOTICE OF INCOMPLETE APPLICATION", filed March 25, 2002, in effect, withdrawal of the Notice of Incomplete Nonprovisional Application, mailed September 25, 2001 and accordation of a February 14, 2002 filing date to the above-identified application. The petition will be treated under 37 CFR 1.53(e)..

The application was deposited on February 14, 2002. On March 12, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioners that no filing date had been accorded to the application papers deposited on February 14, 2002 because no drawing was present, as is required by 35 USC 113.

In response to the Notice, petitioners timely filed the present petition and one sheet of drawing.

It is noted that the above-identified application contains method claims. As stated in MPEP 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence.)

MPEP 601.01(f) also states that:

A non provisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figures in the specification, but filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description.

Therefore, the above-identified application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g).

MPEP 601.01(g) states that if an application is filed without all of the drawing figures referred to in the specification, a "Notice of Omitted Items" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the "Notice" mailed March 12, 2002 was mailed in error and is hereby withdrawn. The petition is **granted**.

The application is entitled to a filing date of February 14, 2002, regardless of whether petitioners establish a sheet of drawings was filed on February 14, 2002. As it turns out, petitioners have shown that 1 sheet of drawings was filed on February 14, 2002.

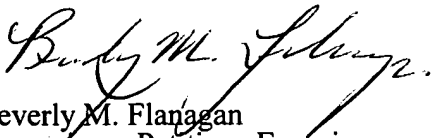
Petitioners have provided a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination date stamp citing February 14, 2002 as the date of receipt of the application papers. The postcard lists, *inter alia*, that the filing included 1 sheet of drawings.

The return postcard constitutes *prima facie* evidence that 1 sheet of drawings was filed on February 14, 2002. MPEP 503. Accordingly, the request is granted.

No fee has been or will be charged in connection with this matter.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of **February 14, 2002**, using the copy of the 1 sheet of drawings submitted with the instant petition. Office records will be corrected to show that 1 sheet of drawing was present on filing.

Any inquiries pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.



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